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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,479	08/14/2006	William Veronesi	60469-092PUS1;PA-000.0519	8352
64779 7590 12/15/2009 CARLSON GASKEY & OLDS 400 W MAPLE STE 350 BIRMINGHAM, MI 48009				
EXAMINER				
WEST, JEFFREY R				
ART UNIT		PAPER NUMBER		
2857				
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12/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/589,479	Applicant(s) VERONESI ET AL.
Examiner Jeffrey R. West	Art Unit 2857

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 December 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): 10/26/09
13. ☐ Other: _____.

/Jeffrey R. West/
Primary Examiner, Art Unit 2857

Continuation of 11:

Applicant argues:

There is no prima facie case of obviousness. The Examiner suggests on page 3 of the Office Action that the Pourliadian reference teaches at column 6, line 59 to column 7, line 28, that a condition of a tensile support is determined based upon a determined rate of degradation over time. Applicant respectfully disagrees. The Pourliadian reference does not make any determination regarding a rate of degradation over time. The only thing that is accomplished in the section of the reference referred to by the Examiner is that a total number of bend cycles are counted until failure is reached. There is no reference to any monitoring or any determination of a rate of degradation. Instead, the steel ropes of that reference are bent until they break and only the total number of bend cycles is recorded. A number of bend cycles at the point of breaking does not provide any information regarding a rate of degradation over time.

The Examiner asserts that Applicant's argument is not considered to be persuasive in light of Applicant's own specification which describes determining a degradation rate of degradation over time, specifically:

As noted above, the strength of a tensile support is related to the cross-sectional area of the cords in the tensile support and accumulated breaks in the cords as the tensile support is bent and unbent around one or more sheaves during elevator operation. Empirical testing can yield a strength loss model linking the loss in tensile support strength and elevator operation factors, such as tensile support loading, sheave geometry (e.g., sheave diameter), and the number of bend cycles. In other words, the model provides a relationship between a constant load and the rate of strength degradation caused by the constant load. (column 2, line 30 to column 3, line 3)

To obtain the strength loss model 102, the rate of degradation of the tensile support for a given constant load is obtained empirically. In one embodiment, repeated bend cycles are applied to a plurality of sample tensile supports until they break. This can be conducted using any known fatigue machine. From this information, it is possible to determine a statistical distribution of the number of bend cycles required to bend a given tensile support to failure for a known constant load. (column 3, lines 16-21).

As can be seen by the cited sections above, Applicant determines a degradation rate of degradation over time empirically by applying repeated bend cycles to sample tensile supports until they break and a statistical distribution of the number of bend cycles required to bend a given tensile support is determined.

The Examiner asserts that this is the same determination of a degradation rate of degradation over time as performed by Pourliadian and, as such, the Examiner maintains that Pourliadian discloses determining a degradation rate of degradation over time, specifically:

To measure the fatigue resistance of the wire rope conditions 1 to 6, six reverse-bend fatigue samples were tested for each wire rope condition. The tests on these 1/2 inch ropes were conducted on 12 inch pitch diameter sheaves. The tensile load on all wire rope samples was kept constant at 8000 pounds. A given length of rope sample was cycled back-and-forth through a three sheave system until rope failure occurred. The number of cycles-to-failure was determined for the six test sample of each wire rope condition. The highest and lowest values were discarded, and the remaining four data points were used to calculate the average number of cycles-to-failure. TABLE 4 shows these average values as well as the standard deviation for each case. The breaking strength of each wire rope condition is shown for comparison purposes. Strength-to-weight ratio values are also shown.

[TABLE 4]

As shown in TABLE 4, the best combination of high strength and fatigue resistance was for the wire ropes that were produced from heat-treated wires and compacted strands; i.e., wire rope conditions 1 and 5. The combination of these two values for the wire rope conditions 3 and 6, for which the wires were not heat-treated and strands were not compacted, were significantly poorer than for the wire rope conditions 1 and 5. (column 6, line 59 to column 7, line 28)

Continuation of 12:

The Examiner notes that per MPEP § 609.05(b):

Information which complies with requirements as discussed in this section but which is in a non-English language will be considered in view of the concise explanation submitted (see MPEP § 609.04(a), subsection III.) and insofar as it is understood on its face, e.g., drawings, chemical formulas, in the same manner that non-English language information in Office search files is considered by examiners in conducting searches.

See *Semiconductor Energy Laboratory Co. v. Samsung Electronics Co.*, 204 F.3d 1368, 1377-78, 54 USPQ2d 1001, 1008 (Fed. Cir. 2000) ("[A]s MPEP Section 609C(2) reveals, the examiner's understanding of a foreign reference is generally limited to that which he or she can glean from the applicant's concise statement... Consequently, while the examiner's initials require that we presume that he or she considered the [foreign] reference, this presumption extends only to the examiner's consideration of the brief translated portion and the concise statement.")

/JRW/